

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-701V

Filed: January 26, 2015

SUSAN SUDMAN

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;
Influenza Vaccine; Shoulder Injury
Related to Vaccine Administration
("SIRVA"); Special Processing Unit
("SPU")

Amber D. Wilson, Maglio Christopher and Toale, PA, Washington, DC for petitioner.
Lisa A. Watts, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Vowell, Chief Special Master:

On August 4, 2014, Susan Sudman filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act" or "Program"). The petition alleges that as a result of an influenza ("flu") vaccination on November 19, 2013, petitioner suffered a shoulder injury related to vaccine administration ("SIRVA"). Petition at 1-2. The case was assigned to the Special Processing Unit ("SPU") of the Office of Special Masters.

On November 20, 2014, I issued a ruling on entitlement, finding petitioner entitled to compensation. On January 23, 2015, respondent filed a proffer on award of compensation ("Proffer") detailing compensation for petitioner's pain and suffering and

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

past un-reimbursable expenses. According to respondent's Proffer, petitioner agrees to the proposed award of compensation.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$163, 111.17 in the form of a check payable to petitioner.**

This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SUSAN SUDMAN,)
) <u>ECF</u>
Petitioner,)
)
v.) No. 14-701V
) Chief Special Master
SECRETARY OF HEALTH AND HUMAN) Denise K. Vowell
SERVICES,)
)
Respondent.)
)

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent proffers that, based on the evidence of record, petitioner is unlikely to incur un-reimbursable future medical expenses as a result of her vaccine-related injury. See 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

B. Lost Earnings

Respondent proffers that based upon the evidence of record, petitioner’s vaccine-related injury has not impacted her earnings capacity. Thus, an award of lost earnings under 42 U.S.C. § 300aa-15(a)(3)(A) is not appropriate in this case. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$160,000.00 in actual and projected pain and suffering. See 42 U.S.C. § 300aa-15(a)(4), (f)(4)(A). Petitioner agrees.

D. Past Un-reimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past un-reimbursable expenses related to her vaccine-related injury. 42 U.S.C. § 300aa-15(a)(1)(B). Respondent proffers that petitioner should be awarded past un-reimbursable expenses in the amount of \$3,111.17. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no Medicaid liens outstanding against her as a result of her vaccine-related injury.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment as described below, and request that the Special Master's decision and the Court's judgment award the following:¹

- A. A lump sum payment of \$163,111.17, representing petitioner's pain and suffering (\$160,000.00), and past un-reimbursable expenses (\$3,111.17) in the form of a check payable to petitioner.

1. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

- | | |
|---|---------------------|
| A. Lump sum paid to petitioner for past lost earnings, pain and suffering, and past un-reimbursable expenses: | \$163,111.17 |
|---|---------------------|

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future pain and suffering.

Respectfully submitted,

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Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

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s/Lisa A. Watts
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Dated: January 23, 2015.